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October 9, 2012

**By ECF**

The Honorable Cathy L. Waldor, U.S.M.J.  
U.S. District Court for the District of New Jersey  
Martin Luther King, Jr. Federal Building & U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07101

**Re: *In re Merck & Co., Inc. Secs., Deriv. and ERISA Litig.*, No. 05-2367 (D.N.J.)**

Dear Judge Waldor:

We write on behalf of the Lead Plaintiffs in this consolidated securities class action regarding Your Honor's October 5, 2012 Letter Opinion resolving certain discovery disputes between the parties (the "Letter Opinion").

Plaintiffs note that the Letter Opinion addressed two issues that Judge Chesler previously decided in Plaintiffs' favor during an August 20, 2012 status conference, and Plaintiffs thus respectfully request that those aspects of the Letter Opinion be withdrawn. Specifically, as memorialized in Judge Chesler's September 26, 2012 Order Regarding the Resolution of Discovery Disputes during the August 20, 2012 Status Conference (the "September 26 Order"), the Court previously held:

- i. "Defendants shall conduct a search of the custodial files of [specific individuals agreed-upon by the parties] and produce documents created between September 30, 2004 and June 30, 2008, that demonstrate, evidence or disclose Merck's and/or any of the individual Defendants' possession or knowledge of information concerning Vioxx and/or naproxen prior to Vioxx's withdrawal from the market on September 30, 2004, [etc.]"; and
- ii. "Defendants shall produce unredacted copies of the audit files for Merck's CTS database related to Vioxx pursuant to the Protective Orders in this

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case, dated November 15, 2005 and June 3, 2010, subject to Plaintiffs' input concerning the parameters of the collection and subject to Defendants' right to seek from the Court cost-shifting if production of such files creates undue burden on Defendants" (Dkt. No. 398 at 3, 5).

These holdings, which incorporate Judge Chesler's rulings during the August 20 conference and the parties' negotiated resolution of certain issues regarding them, reflect the fact that Judge Chesler stated at the August 20 conference that he intended that Your Honor solely address the issues decided in that portion of Your Honor's Letter Opinion concerning "Documents [Defendants] Previously Produced to the Government" (*id.* at 2-7). *See also* September 26 Order, Dkt. No. 398 at 3 ("[T]he issue of whether Defendants will be required to produce to Plaintiffs certain documents that Defendants previously produced to the government in connection with Vioxx-related investigations (as raised in Plaintiffs' May 25, 2012 letter) will be further considered by the Court").

Accordingly, Plaintiffs respectfully request that those aspects of Your Honor's Letter Opinion concerning "Documents Responsive to Specific Requests from Outside the Class Period" (Letter Opinion at 8-10) and concerning Defendants' production of CTS "Audit Files" (*id.* at 11) be withdrawn as already decided by the Court in the September 26 Order. Plaintiffs greatly appreciate Your Honor's time and consideration of these issues in connection with the Letter Opinion, and apologize that Judge Chesler's earlier ruling was not brought to your attention.

We are available at Your Honor's convenience to discuss these matters further.

Respectfully submitted,

CARELLA, BYRNE, CECCHI,  
OLSTEIN, BRODY & AGNELLO



JAMES E. CECCHI

cc: All Counsel (by ECF)